



1952.

File No. O. Khoti Abolition
52

Legal Deptt.
A BRANCH

Subject:— Opinions under the
Bombay Khoti Abolition Act, 1949

File No. O. Khoti Abolition / 52
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12. 6. 56.
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Legal Department.

The view taken by the Revenue Department is correct. The Collector will be legally entitled to reject an application which is not in the prescribed form; but rejection on the ground of insufficient court fee without giving an opportunity to the claimant to make up the deficiency will be bad (see Achut Ramchandra v. Nagesappa, 58 Bom. 41). There would be no objection, however, to issue the proposed instructions directing the Collector not to reject the applications but to give an opportunity to the applicants to supply the deficiencies.

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Additional Secretary to Government.

L.R. to R.D., No. 14035, dated the 28th August, 1933.

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LEGAL DEPARTMENT.

The first point raised for consideration of the Additional Secretary is whether a tenant of a Khoti Nisbat Land in the District of Ratnagiri which land has reverted to the Khot before the Khoti Settlement Act, 1880 came into operation could take the benefit of the proviso to sub-clause (ii) of clause (d) of sub-sec. (1) of section (4) of the Bombay Khoti Abolition Act, 1949. That proviso provides that in the case of a tenant other than a permanent tenant in the possession of Khoti nisbat ~~xx~~ land, such tenant shall be entitled to the rights of an occupant on payment to the khot of the occupancy price equivalent to six multiples of the survey assessment fixed on the land. 'Khoti nisbat land' as defined in section 2(ix)(a) means in the district of Ratnagiri, land which in a khoti village before the coming into force of this Act has reverted to the khot under section 10 of the Khoti Act. Section 10 of the Khoti Settlement Act, 1880, provides that if the land of a privileged occupant lapses for failure of heirs or is forfeited on the occupant's failing to pay the rent due in respect thereof, or if any occupancy-tenant resigns the land or any portion of the land in his holding or does any act purporting to transfer such land or any portion thereof or any interest therein without the consent of the khot, such land shall be at the disposal of the khot as khoti land free of all encumbrances other than loans or charges created or existing in favour of Government. This provision does not mean only the lands which have reverted to the Khot after the Khoti Settlement Act, 1880, came into operation; for, the reversionary interest of a khot has been recognized at least since the decision in Tejubai's case which decision was given so far back as in 1866, and that interest is affirmed in section 58 of the Survey Act and in section 10 of the Khoti Settlement Act, 1880.

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(See Dandekar's Land Tenures, page 315). The Khoti Settlement Act, 1880, was an act to make special provision for the settlement and revenue administration of khoti villages in the district of Ratnagiri and sec. 10 of the said Act codified the reversionary rights which khots enjoyed in accordance with the custom and usage of the Tenure. It is, therefore, apparent that section 10 of the Khoti Settlement Act, merely affirms the right of reversion of the Khot in respect of khoti lands and consequently, the words 'lapsed and resigns' in that section will have to be read as 'lapses or has lapsed' and 'resigns or has resigned,' so that it could cover even the lands ~~xxx~~ which reverted to the Khot before the Khoti Settlement Act, 1880 came into operation. The reply to the first question is in the affirmative.

2. The second point raised for consideration is whether the Prant Officer who was the Recording Officer for the purposes of the Khoti Settlement Act, could sanction the change of tenure in the Kot Khats after the Bombay Khoti Abolition Act, 1949, came into operation. Proviso to section 17 of the Act provides that the repeal of the said enactment and the provision declaring any incident of the khoti tenure to have been extinguished shall not in any way affect any legal proceeding pending at the date of the commencement of this Act and such legal proceeding shall be continued and finally disposed of as if this Act had not been passed. 'Legal proceeding' means a proceeding regulated or prescribed by law in which a judicial decision may or must have been given (see 114 Indian Cases, 317).

The phrase 'legal proceeding' ordinarily means any proceeding in a court of justice by which a party pursues the remedy which the law affords him. The term embraces any of the formal steps or measures employed in the prosecution or defence of a suit. It.

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refers to the use of a judicial process. (see Iyer's
Law Lexicon p. 718). It may include proceedings of
quasi judicial nature before a tribunal. It cannot mean,
any proceeding under the Khoti Settlement Act, 1880, in
which was repealed. The Prant Officer in effecting the
change in the entries in the Bot Khat purported to act
under sections 17, 18, 20 and 21 of the Khoti Settlement
Act, 1880. But in exercising those powers it cannot be
held that he was holding a legal proceeding within the
meaning of section 17 of the Bombay Khoti Abolition Act,
1930. He was not competent to continue the proceedings
and order a change in the entries in the Bot Khat after
the Khoti Abolition Act, came into operation.

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Additional Secretary to Government.

B.R. to B.R., No. 1216-Conf., No. dated the 8th
November, 1932.

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Legal Department.

Section 4 of the Bombay Khoti Abolition Act, 1949, provides that in the district of Ratnagiri in case of khoti misbat lands a tenant other than a permanent tenant can become an occupant on payment of occupancy price to the Khot. The occupancy price is payable in addition to the commuted value of the khot's dues. Section 5 provides for the computation of the commuted value of khot's dues. The Collector of Ratnagiri states that tenants in the district are not in a position to pay the amount and suggests that the payment of the occupancy price and the commuted ^{value} ~~value~~ of Khot's dues may be permitted to be made by instalments. This point was raised when the clauses were discussed in the Bombay Legislative Assembly. The Law Minister, who was in charge of the Bill as follows:-

"Mr. DINKERRAO N. DESAI : Two points have been made by the Hon. Members on the opposite benches. One was that, in case the tenant was not in a position to pay the amount, it should be written off and that nothing should be paid to the khot. This would be unconstitutional. Under section 299 of the Union Constitution, compensation has to be given. Otherwise, it will mean taking away the property of someone without giving him any recompense. This will be against the fundamental rights. The second point was that the amount should be paid by instalments. But, so far as the Government of India Act is concerned, there is no provision for payment by instalments. There is thus a fundamental difficulty; but, in the new Constitution, there is a provision for payment by instalments. The Constitution will come into force by about the end of January next and enquiry will ~~not~~ be made by the Mamlatdar before that time. There will, therefore, be ample scope for orders for payment by instalments. ~~Somehow or other~~ ~~There is also another way out~~ of the difficulty. Government can give tagavi loans or the co-operative societies can make certain advances. So, I do not think that the difficulty will be insurmountable and I feel that, in any case, the occupancy right will not have to be sold."

As stated in the Minister's speech Government in Revenue Department will have to consider the question whether tagavi amount be granted to tenants to assist them to pay the amounts due.

If, however, the solution suggested by the law Minister cannot be given effect to and if there is a default in the payment of this occupancy price or the commuted value on the part of the tenants, the khots will have to recover the amounts as arrears of land revenue. When such application is made to the Mamlatdar, the Mamlatdar can give either sufficient time to make the payment or under rule 117 of the Bombay Land Revenue Rules can direct that the amount payable as an arrears of the land revenue may be paid by instalments.

Sd./-

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Additional Secretary to Government.

U.R. to R.D., No. 20159/A; dated the 2nd December, 52.

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Legal Department.

There is no express provision in the Bombay Khoti Abolition Act, 1949, for delegation of Collector's powers. However, section 10 of the Bombay Land Revenue Code, enacts :

"Subject to the general orders of the State Government, a Collector may place any of his assistants or deputies in charge of the revenue administration one or more of the talukas in his district, or may himself retain charge thereof.

Any Assistant or Deputy Collector, thus placed in charge shall, subject to the provisions of Chapter XIII, perform all the duties and exercise all the powers conferred upon a Collector by this Act or any other law at the time being in force, so far as regards the taluka or talukas in his charge."

On a plain reading of these provisions, it would appear that Prunt Officer will be entitled to exercise all the powers of the Collector under the Khoti Abolition Act, and this view also receives support from the decision in *Keshav v. Jainam*, 13 Bom. L.R., 1081. In a later decision, however, the validity of this decision was doubted by Scott C.J. and Batcherlor J. in a case reported in *Gandh Janaradan v. Arjun*, 39 Bom. 502. The principle of *ejusdem generis* invoked by Their Lordships in this latter case, it is submitted, was wrongly invoked; but as the decision has not been upset, it will have to be accepted as a good law. The same decision will apply to the interpretation of section 8 of the Bombay Land Revenue Code, which does not warrant the appointments of Special Collectors. The Act will have to be amended to provide for delegation.

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Additional Secretary to Government.

U.R. to B.D., No. 20211/A; dated the 2nd December, 1950.

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Legal Department.

The first point raised by the Collector of Ratnagiri is regarding the burden of proving whether any land is Khoti Nisbat. The burden of proof is a rule of evidence and ordinarily lies on the person who would fail if no evidence at all was given in either side. This rule applies to suits and may apply to proceedings under the Bombay Khoti Abolition Act. But it is stated in this case that the Khots are in possession of all documentary evidence. It is also a rule of law that presumptions can be drawn against a person who fails to produce relevant documents in his possession. Although therefore, no strict rule regarding the burden of proof can be followed in the present cases, the Mamlatdar holding the enquiry should require Khots to produce all relevant documents in their possession. In this connection the attention of the Collector may be drawn to section 7 of the Bombay Khoti Abolition Act, 1949, which imposes an obligation on Khots to produce whatever documents are required by the officers of Government.

2. As regards the point regarding whether Khoti Nisbat lands are lands which have reverted to Khots before or after 1880 when section 10 of the Khoti Settlement Act, 1880, came into force the attention of the Collector may be invited to Opinion No. 215-Conf. dated 8th November 1952, where the whole question has been ~~xxx~~ fully dealt with. It is not understood why the question has been again raised by R.D.

3. As regards the interpretation of the expression "tenants other than permanent tenants" in proviso to section 4(1) of the Bombay Khoti Abolition Act it should have been apparent to the Collector that the rights of the permanent tenants in possession of any kind of Khoti land have been recognized in section 4(1)(c) of the Bombay Khoti Abolition Act and

such permanent tenants who become occupants are permanently liable to pay land revenue to government and can hold directly from Government.. They are not required to pay any occupancy price to Khots. This is not a new right which is given to permanent tenants. Since the Khoti Settlement Act, 1880, was amended by the Bombay Land Revenue (Amendment) Act, 1913, the permanent tenants have been holding their lands in this manner. It appears that the Collector has ignored these provisions. If, however, any permanent tenant in addition to the lands held by him as such has been holding Khoti Nisbat lands as a yearly or periodical tenant, the question will be different. His case then will have to be treated as of a tenant falling under section 4(1)(1)(d) and not under section 4(1)(e) of the Act.

4. As regards the point regarding lands which are uncultivated and waste and not appropriated by Khots, it was, no doubt, the right of a Khot to appropriate uncultivated and waste lands for his own use as an incident of the Khoti Tenure. But if he has not exercised that right before the Khoti tenure was abolished, he is not entitled to such lands and under section 6 of the Bombay Khoti Abolition Act, they revert to Government. It would be a question of fact in each case whether a Khot has exercised such right. The view taken in Dr. Patel's note on this point is correct.

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Additional Secretary to Government.

ExRx No. 19944/B; dated the 28th November, 1952.

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Legal Department.

*Bombay Khat
Abolition Act,
1919 - sec. 17 -
changes in entries
in Bot Khat after
coming into force
of Adil Shoy's
opinion No. 1818,
ConfL., dated the
8-11-52.

Attention of the Revenue Department is invited to Additional Secretary's opinion No. 1818, ConfL., dated the 31st November, 1952. As pointed out therein the Front Officer in effecting the change in the entries in the Bot Khat cannot be said to have been holding a legal proceeding within the meaning of section 17 of the Bombay Khat Abolition Act, 1919. He was not therefore competent to continue the proceedings and order a change in the entries in the Bot Khat after the said Act came into operation. The view taken in the R.D. note at p. 5 ante is not correct.

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Additional Secretary, to Government.

G.A. to R.D., No. 20604/A, dated the 11th December, 1952.

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Legal Department.

The first point raised by the Collector of Kolaba is that the word "Khasgi" should be deleted from section 2(vii)(b)(1) of the Bombay Khoti Abolition Act, 1949. The Collector states that the word "Khasgi" was for the first time coined by the Survey Department in 1914 and does not appear in the old Revenue records. This view is not correct. In *Ganpat Gopal v. Secretary of State* I.L.R. 48 Bom. 599, the Bombay High Court has expressly held that the village lands which a Khot has to manage in accordance with the restrictions mentioned in the Kabylayat fall into three classes one of which is 'Khoti Khasgi'. The High Court has described Khoti Khasgi lands as private lands in the possession of the Khot of which he can make such use as he pleases. It was in 1914 by G.O. No. 18080 dated 19-12-1914 that Government in Revenue Department described these lands in the terms in which they are defined in section 2(vii)(b)(1) of the Bombay Khoti Abolition Act, 1949. The Collector, therefore, is wrong in holding that Khoti Khasgi lands came into existence only in 1914 and not before. His suggestion to delete the word "khasgi" is not correct.

2. The second point raised by the Collector is whether the persons including the Khot and his tenants who are declared to be occupants under section 4 of the Act should be given the lands on a new tenure. Section 4 does not provide that occupancy of the lands referred to therein will be on new tenure or that the State Government has any right to impose conditions on the persons declared to be occupants. The fact that the occupancy price fixed is nominal has no relevance. Taking into consideration all the incidents of the tenure which was being abolished, the State Legislature has fixed the occupancy price at the rate specified in section 4.

3. The third point raised is in regard to the claim of the Khote for ~~their~~ share to recover one third of the net proceeds of the forest when it ~~will~~^{would} be cut. This claim is based on clause 10 of the Kabalayet which is attached to the consent decree in appeal No. 1035 of 1948. In the Khothi litigation which went on for several years and which ended in the said consent decree, the contention of Khote was that they were proprietors and as such they ~~were~~ were entitled to share in the cutting of the reserved forest trees. On the other hand the case for Government was ~~that~~ that Khote were mere farmers of the revenue and has no rights in the soil and therefore to trees in the villages and that the Kabalayets which contained a condition that Khote were entitled to share in the realization of the proceeds of the forest cuttings were based on the assumption that as the managers of the villages they were entitled to the said share. The dispute was settled and Government agreed to the consent decree. In the Kabalayet which was accepted by both the parties, clause 10 provided as follows :-

"Without prejudice to the duties and obligations that are or may be cast upon us under the Indian Forest Act, 1927, and the rules made thereunder, we (i.e., Khote) ~~will~~ shall be entitled to get ~~the~~ third share of the net proceeds, after deducting expenses of all fellings made by Government in the reserved forest of the village, reduced by 20 per cent of the amount of such share.

Whatever may have been the contentions of the parties, it is clear that this clause in the consent decree will be held as entitled the Khote to a share in the net proceeds of the forest cuttings. The clause is binding on Government and for the extinction of the Khote's right ~~maximum~~ under the said clause, they will be entitled to compensation. It will be somewhat diffi-

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c. It to assess the market value of the claim based on the said clause. But if the forest cutting takes place every 20 years, it would be equitable to assess the market value of the said claim basing it on the average of two or three cuttings which may have taken place upto now. The said average should be deemed to have been realised during a period of 20 years. The amount due to the Khot should then be reduced in proportion to the number of years which may have elapsed since the last cutting was made and which fall short of the period of 20 years when the next cutting is likely to be made.

Sd./-
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Additional Secretary to Government.

H.R. to R.D., No. 16448/A; dated the 7th October, 1952.

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